



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,857	12/29/2000	Ron J. Doyle	12818.1USUI	8938

23552 7590 06/06/2002

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

SHAHNAN SHAH, KHATOL S

ART UNIT	PAPER NUMBER
----------	--------------

1645

DATE MAILED: 06/06/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,857

Applicant(s)

DOYLE ET AL.

Examiner

Khatol S Shahnan-Shah

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 51-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-21 and 51-57 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s), _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The Examiner of U.S. Patent application SN 09/750,857 has changed. In order to expedite the correlation of papers with the application please direct all future correspondence to Examiner Shahnan-Shah, Technology Center 1600, Art Unit 1645.
2. Applicants' preliminary amendment A received 6/19/2001, paper # 6 is acknowledged. Specification pages 51, 52, 53 were amended.
3. Applicants' Information Disclosure Statement received 2/20/2001, paper # 7 is acknowledged.
4. Applicants' preliminary amendment B received 3/04/2002, paper # 10 is acknowledged. Claims 22-50 were canceled. New claims 51-57 were added.

Election/Restrictions

5. Applicants' election with out traverse of 3/04/2002, paper # 10 is acknowledged. Applicants elected group I claims 1-21. Newly added claims 51-57 are also drawn to the same invention.
6. Currently claims 1-21 and 51-57 are pending.
7. In view of the new preliminary amendment, new election will follow:

This application contains claims directed to the following patentably distinct species of the claimed invention:

1a. Please choose one of the species from claims 2 and 13; (i) polyphenol; (ii) asparaginase.

1b. Please choose one of the species from claims 3 and 17; (i) procaryote; (ii) eukaryote; or (iii) virus.

Art Unit: 1645

If applicants choose prokaryote there will further election of species; (i) gram positive; (ii) gram negative.

If applicants choose eukaryote there will further election of species; (i) fungus; (ii) protozoa.

1c. Please choose one of the species from claims 51.

1d. Please choose one of the species from claims 52.

1e. Please choose one of the species from claims 56.

1f. Please choose one of the species from claims 57.

The species are shown to be distinct because they are drawn to distinct products made by different methods and they are structurally and functionally distinct molecules.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 9 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Art Unit: 1645

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnan-Shah whose telephone number is (703) 308-8896. The examiner can normally be reached on 7:30 AM - 4 PM from Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned to is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

 6/4/02

Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

Art Unit 1645

June 4, 2002


LYNETTE F. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600